

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHWEST ADMINISTRATORS,
INC.,

Plaintiff(s),

v.

EL CAMINO PAVING, INC., a
California Corporation,

Defendant(s).

No. C10-1950 CW (BZ)

**REPORT AND RECOMMENDATION
FOR DEFAULT JUDGMENT**

Plaintiff Northwest Administrator Inc.'s motion for entry of default judgment against defendant El Camino Paving, Inc. has been referred to me for a report and recommendation. Defendant has not appeared in this action and did not respond to plaintiff's motion. The following is a report and recommendation for entry of default judgment.

On May 5, 2010, plaintiff filed a complaint under § 301(c)(1) of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185(a), and § 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §

1 1132. The complaint alleges that defendant violated the
2 provisions of a collective bargaining agreement and a trust
3 agreement that required defendant to make regular
4 contributions and to submit reports of its employees' work
5 hours at regular intervals to the Western Conference of
6 Teamsters Pension Trust Fund that plaintiff administers.
7 Docket No. 1 ¶¶ 6, 7, 8, 9. The complaint seeks actual
8 damages "according to proof" for all contributions due,
9 interest provided for by the contract, liquidated damages,
10 attorneys' fees, and costs.

11 Plaintiff effected service of process of the complaint on
12 May 26, 2010. Defendant failed to answer the complaint or
13 otherwise defend the action. On July 19, 2010, upon
14 plaintiff's request, the clerk of this court entered
15 defendant's default under Rule 55(a). By its default,
16 defendant is deemed to have admitted the well-pleaded
17 averments of the complaint except those as to the amount of
18 damages. Fed. R. Civ. P. 8(d).

19 Pursuant to Rule 55(b)(2), the court may enter a default
20 judgment against a party against whom default has been
21 entered. The decision to grant or deny a default judgment
22 under Rule 55(b) is within the discretion of the Court. Eitel
23 v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A formal
24 hearing is not required for a court to render a default
25 judgment. Davis v. Fendler, 650 F.2d 1154 (9th Cir. 1981).

26 A court may not enter a default judgment against an
27 unrepresented minor, an incompetent person, or a person in
28 military service. Fed. R. Civ. P. 55(b)(2); 50 App. U.S.C. §

521. Defendant, as a corporation, is not subject to these limitations.

Section 1132(g)(2) of ERISA provides that in an action to enforce payment of delinquent contributions:

"the court shall award the plan—
(A) the unpaid contributions,
(B) interest on the unpaid contributions,
(C) an amount equal to the greater of—
(i) interest on the unpaid contributions,
or
(ii) liquidated damages provided for under
the plan in an amount not in excess of 20
percent. . . of the amount determined by the
court under subparagraph (A),
(D) reasonable attorney's fees and costs."

An award under section 1132(g)(2) is mandatory if: (1) the employer is delinquent at the time the action is filed; (2) the district court has entered a judgment against the employer; and (3) the plan provides for such an award.

Northwest Adm'rs, Inc. v. Albertson's, Inc., 104 F.3d 253, 257 (9th Cir. 1996) (citing Idaho Plumbers and Pipefitters Health and Welfare Fund v. United Mechanical Contractors, Inc., 875 F.2d 212, 215-16 (9th Cir. 1989)).

Here, plaintiff has provided evidence demonstrating that defendant is delinquent in its contribution payments. Docket Nos. 15 Ex. 4; 16 Exs. 1, 2. Plaintiff has also provided documentation demonstrating that the plan is entitled to the awards outlined in its motion. Docket Nos. 1; 15 Ex. 3. Thus, plaintiff has satisfied the statutory requirements of Section 1132(g) of ERISA and is entitled to relief.

In its motion, plaintiff seeks damages totaling \$7,590.15. This includes \$6,149.00 in unpaid contributions, \$141.35 in interest as of the date of this recommendation, and

1 \$1,299.80 in liquidated damages. Docket No. 14.

2 Along with its motion for default judgment, plaintiff
3 submitted the declaration of Michael J. Carroll, plaintiff's
4 counsel, that listed the amount of attorneys' fees and costs
5 associated with this litigation. Docket No. 17. Plaintiff
6 also submitted a declaration by Diane Andrade, manager of the
7 Trust Fund Delinquency Collection Department at Erskine &
8 Tully. Docket No. 16. Andrade's declaration documents
9 defendant's delinquent contributions which are \$6,149.00 and
10 calculates applicable interest and liquidated damages. Docket
11 No. 16.

12 Under section 1132(g)(2) of ERISA, plaintiff is entitled
13 to an award of interest and liquidated damages on delinquent
14 contributions. Interest on unpaid contributions is calculated
15 according to rate provisions specified in the Pension Trust
16 Fund agreement, which is currently set at 4 percent.¹ 29
17 U.S.C. § 1132(g)(2)(B). Accordingly, plaintiff is entitled to
18 interest at the rate of 4 percent. As of December 15, this
19 amounts to \$141.35 in interest.

20 Liquidated damages on unpaid contributions are also
21 calculated according to provisions specified in the Pension
22 Trust Fund agreement, but may not exceed 20 percent of the
23 contributions due. 29 U.S.C. § 1132(g)(2)(C)(ii). The

24 ¹ Article IV, Section 3(d) of the trust fund agreement
25 specifies that interest will be calculated at the rate
26 specified by 26 U.S.C. § 6621. Docket No. 15 Ex. 3. The
27 current underpayment rate prescribed by this section is 4
28 percent. I.R.S., *Interest Rates Remain the Same For the Fourth
Quarter of 2010*,
<http://www.irs.gov/newsroom/article/0,,id=226694,00.html> (last
visited Nov. 22, 2010).

1 agreement calls for liquidated damages at the maximum allowed,
2 20 percent. Docket No. 15 Ex. 3 Art. IV, Sec. 3(b)(2)(B).
3 Accordingly, plaintiff is entitled to liquidated damages equal
4 to 20 percent of the contributions due which is \$1,299.80.

5 Plaintiff also seeks \$740.00 in attorneys' fees.
6 Reasonable attorneys' fees and costs may be awarded to a Trust
7 Fund that receives a judgment in its favor. 29 U.S.C. §
8 1132(g)(2)(D). The Ninth Circuit employs the lodestar approach
9 to determine whether a fee request is reasonable. Jordan v.
10 Multnomath County, 815 F.2d 1258, 1262-63 (9th Cir. 1987).
11 "The 'lodestar' is calculated by multiplying the number of
12 hours the prevailing party reasonably expended on the
13 litigation by a reasonable hourly rate." Camacho v.
14 Bridgeport Fin., Inc., 523 F.3d 973, 978 (9th Cir. 2008). The
15 lodestar is deemed to be presumptively reasonable, though the
16 district court has the discretion to consider an upward or
17 downward adjustment. Id.

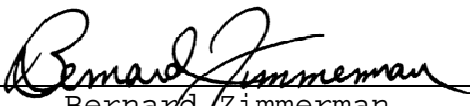
18 In support of its motion for attorneys' fees, plaintiff's
19 counsel submits a declaration asserting that he spent "in
20 excess of 4 hours in the prosecution of this case." Docket No.
21 17. Plaintiff's attorney billed \$180 per hour on this matter.
22 I am satisfied that this hourly rate and the hours charged for
23 the work performed by plaintiff's attorney are reasonable for
24 this type of case. Plaintiff's attorney, however,
25 miscalculated the fees due for the time that he accounted for.
26 Accordingly, I recommend that plaintiff be awarded attorneys'
27 fees in the amount of \$720.00.

28 Plaintiff additionally seeks \$670.00 for costs that

1 consist entirely of filing fees and service costs. Docket No.
2 17. These costs were reasonable and necessarily expended on
3 this case. Accordingly, I recommend that plaintiffs be
4 awarded all of their costs.

5 For the foregoing reasons, I recommend that judgment be
6 entered in plaintiff's favor against defendant in the amount
7 of **\$8,980.15**. This amount includes: \$6,149.00 in unpaid
8 contributions, \$141.35 in interest, \$1,299.80 in liquidated
9 damages, \$720.00 in attorneys' fees, and \$670.00 in costs.

10 Dated: December 15, 2010

11 
12 Bernard Zimmerman
United States Magistrate Judge

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